

AMENDED IN SENATE APRIL 27, 2010

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 892**

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**Introduced by Senator Alquist**

January 25, 2010

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An act to amend Section 1569.17 of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 892, as amended, Alquist. Care facilities.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure of residential care facilities by the department.

Existing law requires a criminal record check of applicants for a license, special permit, or certificate of approval to operate a residential care facility for the elderly, or for other persons, including nonclients who reside in those facilities and staff and employees. Existing law requires that an application be denied if it is found that the applicant or any of the other designated persons has been convicted of a crime, other than a minor traffic violation. Existing law authorizes the Director of Social Services to grant an exemption from disqualification under these provisions, but prohibits the director from granting an exemption in the case of certain crimes.

This bill would add additional specified crimes with respect to which the director is prohibited from granting an exemption. *This bill would also add specified crimes with respect to which the director is prohibited from granting an exemption within 10 years of either the date the person was convicted of the offense or the date the person was released from incarceration for the offense, whichever is later.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1569.17 of the Health and Safety Code  
2 is amended to read:

3 1569.17. The Legislature recognizes the need to generate timely  
4 and accurate positive fingerprint identification of applicants as a  
5 condition of issuing licenses, permits, or certificates of approval  
6 for persons to operate or provide direct care services in a residential  
7 care facility for the elderly. It is the intent of the Legislature in  
8 enacting this section to require the fingerprints of those individuals  
9 whose contact with clients of residential care facilities for the  
10 elderly may pose a risk to the clients' health and safety. An  
11 individual shall be required to obtain either a criminal record  
12 clearance or a criminal record exemption from the State Department  
13 of Social Services before his or her initial presence in a residential  
14 care facility for the elderly.

15 (a) (1) Before issuing a license to any person or persons to  
16 operate or manage a residential care facility for the elderly, the  
17 department shall secure from an appropriate law enforcement  
18 agency a criminal record to determine whether the applicant or  
19 any other person specified in subdivision (b) has ever been  
20 convicted of a crime other than a minor traffic violation or arrested  
21 for any crime specified in subdivision (c) of Section 290 of the  
22 Penal Code, for violating Section 245 or 273.5, subdivision (b) of  
23 Section 273a or, prior to January 1, 1994, paragraph (2) of Section  
24 273a of the Penal Code, or for any crime for which the department  
25 cannot grant an exemption if the person was convicted and the  
26 person has not been exonerated.

27 (2) The criminal history information shall include the full  
28 criminal record, if any, of those persons, and subsequent arrest  
29 information pursuant to Section 11105.2 of the Penal Code.

30 (3) The following shall apply to the criminal record information:

31 (A) If the State Department of Social Services finds that the  
32 applicant or any other person specified in subdivision (b) has been  
33 convicted of a crime, other than a minor traffic violation, the  
34 application shall be denied, unless the director grants an exemption  
35 pursuant to subdivision (f).

1 (B) If the State Department of Social Services finds that the  
2 applicant, or any other person specified in subdivision (b) is  
3 awaiting trial for a crime other than a minor traffic violation, the  
4 State Department of Social Services may cease processing the  
5 application until the conclusion of the trial.

6 (C) If no criminal record information has been recorded, the  
7 Department of Justice shall provide the applicant and the State  
8 Department of Social Services with a statement of that fact.

9 (D) If the State Department of Social Services finds after  
10 licensure that the licensee, or any other person specified in  
11 paragraph (2) of subdivision (b), has been convicted of a crime  
12 other than a minor traffic violation, the license may be revoked,  
13 unless the director grants an exemption pursuant to subdivision  
14 (f).

15 (E) An applicant and any other person specified in subdivision  
16 (b) shall submit fingerprint images and related information to the  
17 Department of Justice and the Federal Bureau of Investigation,  
18 through the Department of Justice, for a state and federal level  
19 criminal offender record information search, in addition to the  
20 search required by subdivision (a). If an applicant meets all other  
21 conditions for licensure, except receipt of the Federal Bureau of  
22 Investigation's criminal history information for the applicant and  
23 persons listed in subdivision (b), the department may issue a license  
24 if the applicant and each person described by subdivision (b) has  
25 signed and submitted a statement that he or she has never been  
26 convicted of a crime in the United States, other than a traffic  
27 infraction as defined in paragraph (1) of subdivision (a) of Section  
28 42001 of the Vehicle Code. If, after licensure, the department  
29 determines that the licensee or person specified in subdivision (b)  
30 has a criminal record, the license may be revoked pursuant to  
31 Section 1569.50. The department may also suspend the license  
32 pending an administrative hearing pursuant to Sections 1569.50  
33 and 1569.51.

34 (b) In addition to the applicant, the provisions of this section  
35 shall apply to criminal convictions of the following persons:

36 (1) (A) Adults responsible for administration or direct  
37 supervision of staff.

38 (B) Any person, other than a client, residing in the facility.  
39 Residents of unlicensed independent senior housing facilities that  
40 are located in contiguous buildings on the same property as a

1 residential care facility for the elderly shall be exempt from these  
2 requirements.

3 (C) Any person who provides client assistance in dressing,  
4 grooming, bathing, or personal hygiene. Any nurse assistant or  
5 home health aide meeting the requirements of Section 1338.5 or  
6 1736.6, respectively, who is not employed, retained, or contracted  
7 by the licensee, and who has been certified or recertified on or  
8 after July 1, 1998, shall be deemed to meet the criminal record  
9 clearance requirements of this section. A certified nurse assistant  
10 and certified home health aide who will be providing client  
11 assistance and who falls under this exemption shall provide one  
12 copy of his or her current certification, prior to providing care, to  
13 the residential care facility for the elderly. The facility shall  
14 maintain the copy of the certification on file as long as the care is  
15 being provided by the certified nurse assistant or certified home  
16 health aide at the facility. Nothing in this paragraph restricts the  
17 right of the department to exclude a certified nurse assistant or  
18 certified home health aide from a licensed residential care facility  
19 for the elderly pursuant to Section 1569.58.

20 (D) Any staff person, volunteer, or employee who has contact  
21 with the clients.

22 (E) If the applicant is a firm, partnership, association, or  
23 corporation, the chief executive officer or other person serving in  
24 a similar capacity.

25 (F) Additional officers of the governing body of the applicant  
26 or other persons with a financial interest in the applicant, as  
27 determined necessary by the department by regulation. The criteria  
28 used in the development of these regulations shall be based on the  
29 person's capability to exercise substantial influence over the  
30 operation of the facility.

31 (2) The following persons are exempt from requirements  
32 applicable under paragraph (1):

33 (A) A spouse, relative, significant other, or close friend of a  
34 client shall be exempt if this person is visiting the client or provides  
35 direct care and supervision to that client only.

36 (B) A volunteer to whom all of the following apply:

37 (i) The volunteer is at the facility during normal waking hours.

38 (ii) The volunteer is directly supervised by the licensee or a  
39 facility employee with a criminal record clearance or exemption.

1 (iii) The volunteer spends no more than 16 hours per week at  
2 the facility.

3 (iv) The volunteer does not provide clients with assistance in  
4 dressing, grooming, bathing, or personal hygiene.

5 (v) The volunteer is not left alone with clients in care.

6 (C) A third-party contractor retained by the facility if the  
7 contractor is not left alone with clients in care.

8 (D) A third-party contractor or other business professional  
9 retained by a client and at the facility at the request or by  
10 permission of that client. These individuals may not be left alone  
11 with other clients.

12 (E) Licensed or certified medical professionals are exempt from  
13 fingerprint and criminal background check requirements imposed  
14 by community care licensing. This exemption does not apply to a  
15 person who is a community care facility licensee or an employee  
16 of the facility.

17 (F) Employees of licensed home health agencies and members  
18 of licensed hospice interdisciplinary teams who have contact with  
19 a resident of a residential care facility at the request of the resident  
20 or resident's legal decisionmaker are exempt from fingerprint and  
21 criminal background check requirements imposed by community  
22 care licensing. This exemption does not apply to a person who is  
23 a community care facility licensee or an employee of the facility.

24 (G) Clergy and other spiritual caregivers who are performing  
25 services in common areas of the residential care facility, or who  
26 are advising an individual resident at the request of, or with  
27 permission of, the resident, are exempt from fingerprint and  
28 criminal background check requirements imposed by community  
29 care licensing. This exemption does not apply to a person who is  
30 a community care facility licensee or an employee of the facility.

31 (H) Any person similar to those described in this subdivision,  
32 as defined by the department in regulations.

33 (I) Nothing in this paragraph shall prevent a licensee from  
34 requiring a criminal record clearance of any individual exempt  
35 from the requirements of this section, provided that the individual  
36 has client contact.

37 (c) (1) (A) Subsequent to initial licensure, any person required  
38 to be fingerprinted pursuant to subdivision (b) shall, as a condition  
39 to employment, residence, or presence in a residential facility for  
40 the elderly, be fingerprinted and sign a declaration under penalty

1 of perjury regarding any prior criminal convictions. The licensee  
2 shall submit these fingerprint images and related information to  
3 the Department of Justice and the Federal Bureau of Investigation,  
4 through the Department of Justice, for a state and federal level  
5 criminal offender record information search, or to comply with  
6 paragraph (1) of subdivision (g) prior to the person's employment,  
7 residence, or initial presence in the residential care facility for the  
8 elderly.

9 (B) These fingerprint images and related information shall be  
10 electronically transmitted in a manner approved by the State  
11 Department of Social Services and the Department of Justice. A  
12 licensee's failure to submit fingerprint images and related  
13 information to the Department of Justice, or to comply with  
14 paragraph (1) of subdivision (g), as required in this section, shall  
15 result in the citation of a deficiency and an immediate assessment  
16 of civil penalties in the amount of one hundred dollars (\$100) per  
17 violation per day for a maximum of five days, unless the violation  
18 is a second or subsequent violation within a 12-month period in  
19 which case the civil penalties shall be in the amount of one hundred  
20 dollars (\$100) per violation for a maximum of 30 days, and shall  
21 be grounds for disciplining the licensee pursuant to Section  
22 1569.50. The State Department of Social Services may assess civil  
23 penalties for continued violations as permitted by Section 1569.49.  
24 The licensee shall then submit these fingerprint images to the State  
25 Department of Social Services for processing. Documentation of  
26 the individual's clearance or exemption shall be maintained by the  
27 licensee and be available for inspection. The Department of Justice  
28 shall notify the department, as required by Section 1522.04, and  
29 notify the licensee by mail within 14 days of electronic  
30 transmission of the fingerprints to the Department of Justice, if  
31 the person has no criminal record. A violation of the regulations  
32 adopted pursuant to Section 1522.04 shall result in the citation of  
33 a deficiency and an immediate assessment of civil penalties in the  
34 amount of one hundred dollars (\$100) per violation per day for a  
35 maximum of five days, unless the violation is a second or  
36 subsequent violation within a 12-month period in which case the  
37 civil penalties shall be in the amount of one hundred dollars (\$100)  
38 per violation for a maximum of 30 days, and shall be grounds for  
39 disciplining the licensee pursuant to Section 1569.50. The

1 department may assess civil penalties for continued violations as  
2 permitted by Section 1569.49.

3 (2) Within 14 calendar days of the receipt of the fingerprint  
4 images, the Department of Justice shall notify the State Department  
5 of Social Services of the criminal record information, as provided  
6 for in this subdivision. If no criminal record information has been  
7 recorded, the Department of Justice shall provide the licensee and  
8 the State Department of Social Services with a statement of that  
9 fact within 14 calendar days of receipt of the fingerprint images.  
10 If new fingerprint images are required for processing, the  
11 Department of Justice shall, within 14 calendar days from the date  
12 of receipt of the fingerprint images, notify the licensee that the  
13 fingerprint images were illegible.

14 (3) Except for persons specified in paragraph (2) of subdivision  
15 (b), the licensee shall endeavor to ascertain the previous  
16 employment history of persons required to be fingerprinted under  
17 this subdivision. If the State Department of Social Services  
18 determines, on the basis of the fingerprint images submitted to the  
19 Department of Justice, that the person has been convicted of a sex  
20 offense against a minor, an offense specified in Section 243.4,  
21 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State  
22 Department of Social Services shall notify the licensee in writing  
23 within 15 calendar days of the receipt of the notification from the  
24 Department of Justice to act immediately to terminate the person's  
25 employment, remove the person from the residential care facility  
26 for the elderly, or bar the person from entering the residential care  
27 facility for the elderly. The State Department of Social Services  
28 may subsequently grant an exemption pursuant to subdivision (f).  
29 If the conviction was for another crime, except a minor traffic  
30 violation, the licensee shall, upon notification by the State  
31 Department of Social Services, act immediately to either (1)  
32 terminate the person's employment, remove the person from the  
33 residential care facility for the elderly, or bar the person from  
34 entering the residential care facility for the elderly or (2) seek an  
35 exemption pursuant to subdivision (f). The department shall  
36 determine if the person shall be allowed to remain in the facility  
37 until a decision on the exemption is rendered by the department.  
38 A licensee's failure to comply with the department's prohibition  
39 of employment, contact with clients, or presence in the facility as  
40 required by this paragraph shall result in a citation of deficiency

1 and an immediate assessment of civil penalties by the department  
2 against the licensee, in the amount of one hundred dollars (\$100)  
3 per violation per day for a maximum of five days, unless the  
4 violation is a second or subsequent violation within a 12-month  
5 period in which case the civil penalties shall be in the amount of  
6 one hundred dollars (\$100) per violation for a maximum of 30  
7 days, and shall be grounds for disciplining the licensee pursuant  
8 to Section 1569.50.

9 (4) The department may issue an exemption on its own motion  
10 pursuant to subdivision (f) if the person's criminal history indicates  
11 that the person is of good character based on the age, seriousness,  
12 and frequency of the conviction or convictions. The department,  
13 in consultation with interested parties, shall develop regulations  
14 to establish the criteria to grant an exemption pursuant to this  
15 paragraph.

16 (5) Concurrently with notifying the licensee pursuant to  
17 paragraph (4), the department shall notify the affected individual  
18 of his or her right to seek an exemption pursuant to subdivision  
19 (f). The individual may seek an exemption only if the licensee  
20 terminates the person's employment or removes the person from  
21 the facility after receiving notice from the department pursuant to  
22 paragraph (4).

23 (d) (1) For purposes of this section or any other provision of  
24 this chapter, a conviction means a plea or verdict of guilty or a  
25 conviction following a plea of nolo contendere. Any action that  
26 the department is permitted to take following the establishment of  
27 a conviction may be taken when the time for appeal has elapsed,  
28 when the judgment of conviction has been affirmed on appeal or  
29 when an order granting probation is made suspending the  
30 imposition of the sentence, notwithstanding a subsequent order  
31 pursuant to the provisions of Sections 1203.4 and 1203.4a of the  
32 Penal Code permitting a person to withdraw his or her plea of  
33 guilty and to enter a plea of not guilty, or setting aside the verdict  
34 of guilty, or dismissing the accusation, information, or indictment.  
35 For purposes of this section or any other provision of this chapter,  
36 the record of a conviction, or a copy thereof certified by the clerk  
37 of the court or by a judge of the court in which the conviction  
38 occurred, shall be conclusive evidence of the conviction. For  
39 purposes of this section or any other provision of this chapter, the  
40 arrest disposition report certified by the Department of Justice or



documents admissible in a criminal action pursuant to Section 969b of the Penal Code shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility for the elderly as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, ~~211~~, 215, 220, 222, 243.4, ~~245~~, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, ~~273.5~~, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, or 289.5, subdivision (c) of Section 290, subdivision (a) of Section 347, Section 368, subdivision (b) of Section 417, ~~451, 459, 470, 475, 484, or 484b~~, Sections ~~484d to~~

1 ~~484j, inclusive, Section 487, 488, 496, 503, 518, or 666. or Section~~  
2 ~~451 of the Penal Code.~~

3 (B) A felony offense specified in Section 729 of the Business  
4 and Professions Code.

5 (C) *Sections 211, 245, 273.5, 459, 470, 475, 484, or 484b,*  
6 *Sections 484d to 484j, inclusive, or Sections 487, 488, 496, 503,*  
7 *518, or 666 of the Penal Code, if it is within 10 years of either the*  
8 *date the person was convicted of the offense or the date the person*  
9 *was released from incarceration for the offense, whichever is later.*

10 (2) The director shall notify in writing the licensee or the  
11 applicant of his or her decision within 60 days of receipt of all  
12 information from the applicant and other sources determined  
13 necessary by the director for the rendering of a decision pursuant  
14 to this subdivision.

15 (3) The department may not prohibit a person from being  
16 employed or having contact with clients in a facility on the basis  
17 of a denied criminal record exemption request or arrest information  
18 unless the department complies with the requirements of Section  
19 1569.58.

20 (g) (1) For purposes of compliance with this section, the  
21 department may permit an individual to transfer a current criminal  
22 record clearance, as defined in subdivision (a), from one facility  
23 to another, as long as the criminal record clearance has been  
24 processed through a state licensing district office, and is being  
25 transferred to another facility licensed by a state licensing district  
26 office. The request shall be submitted in writing to the department,  
27 and shall include a copy of the person's driver's license or valid  
28 identification card issued by the Department of Motor Vehicles,  
29 or a valid photo identification issued by another state or the United  
30 States government if the person is not a California resident. Upon  
31 request of the licensee, who shall enclose a self-addressed stamped  
32 envelope for this purpose, the department shall verify whether the  
33 individual has a clearance that can be transferred.

34 (2) The State Department of Social Services shall hold criminal  
35 record clearances in its active files for a minimum of two years  
36 after an employee is no longer employed at a licensed facility in  
37 order for the criminal record clearances to be transferred under  
38 this section.

39 (h) If a licensee or facility is required by law to deny  
40 employment or to terminate employment of any employee based

1 on written notification from the department that the employee has  
2 a prior criminal conviction or is determined unsuitable for  
3 employment under Section 1569.58, the licensee or facility shall  
4 not incur civil liability or unemployment insurance liability as a  
5 result of that denial or termination.

6 (i) Notwithstanding any other law, the department may provide  
7 an individual with a copy of his or her state or federal level criminal  
8 offender record information search response as provided to that  
9 department by the Department of Justice if the department has  
10 denied a criminal background clearance based on this information  
11 and the individual makes a written request to the department for  
12 a copy specifying an address to which it is to be sent. The state or  
13 federal level criminal offender record information search response  
14 shall not be modified or altered from its form or content as provided  
15 by the Department of Justice and shall be provided to the address  
16 specified by the individual in his or her written request. The  
17 department shall retain a copy of the individual's written request  
18 and the response and date provided.

19 SEC. 2. The amendments to subdivision (f) of Section 1569.17  
20 of the Health and Safety Code made by the act that added that  
21 section shall not apply to any person who received an exemption  
22 pursuant to that subdivision prior to January 1, 2011.